

### **REMARKS**

After entry of this amendment claims 22-24 and 75-81 will remain in the case.

Applicant resubmits, with the attached information disclosure statement, FR 2 312 264 together with a translation as previously requested by the Examiner.

The Examiner, in the prior Final Office action, has rejected claims 22 and 75 under 35 U.S.C. §102(a) as being anticipated by Tsugita et al., (US 5,662,671). Claims 23, 24, 76 and 77 were rejected as obvious over Tsugita in view of Barbut et al. (US 5,662,671).

#### **The Cited Art**

##### **Tsugita**

Figures 1-3 of the patent to Tsugita discloses a blood filter and balloon occluder comprising a pressurizing cannula 52 to which a balloon occluder 65 is mounted. A blood filter surrounds a blood cannula 10 and includes an inflatable ring 70 with holding strings 55 connecting ring 70 to the distal region of cannula 50. Ring 70 is also connected to a conical shaped filter mesh 75 on the outer side of ring 70. (16/45-56; 17/8-24)

In use, the cannula is introduced into the aorta through an incision. Ring 70 of the filter is then inflated to contact the inside of the aorta. Balloon occluder 65 is then deployed upstream of the filter. When the procedure is completed, balloon occluder 65 is deflated. Any embolic material dislodged by the expansion or contraction of occluder 65 is captured by the filter. The ring 70 is depressurized to capture dislodge material within filter mesh 75 and the device is removed. (19/65-20/29)

Balloon occluder 65 of figures 1-3 is replaced in the embodiment of figure 31 by a dam structure 513. Dam structure 513 optionally includes a balloon 514. Dam structure 513 has a plurality of lifting arms 551. (30/20-27)

#### **The Cited Art Distinguished**

**Independent claims 22 and 75** have each been rejected as anticipated by Tsugita. However, dam structure 513 of Tsugita does not comprise a braided element and membrane contacting the braided element. Tsugita states that dam structure 513 has a plurality of lifting

arms 551. There is nothing in Tsugita disclosing or suggesting that Tsugita includes a braided structure, much less a braided structure with a membrane contacting it. Accordingly, claims 22 and 75 are not anticipated by Tsugita.

In the **Advisory Action** the Examiner states that figure 31 of Tsugita shows a crisscross pattern. However, as discussed above, dam structure 513 has a plurality of lifting arms 551; there is nothing in Tsugita disclosing or suggesting that lifting arms 551 are part of a braided structure. The Examiner's position is sheer conjecture and is not supported by fact. In addition, while balloon 514 of Tsugita is shown as part of dam structure 513, it fails to disclose or suggest "a membrane contacting the braided element so that the braided element is substantially impermeable when in the radially expanded state ... ." (emphasis supplied) It appears that balloon 514 of Tsugita would fail to have any effect on the permeability of dam structure 513 because it is contacting the remainder of the dam structure in what appears to be a line contact.

It would not have been obvious to modify Tsugita to arrive at the inventions of either of claims 22 or 75 because (1) there is no teaching or suggestion to do so, and (2) Tsugita fails to disclose how dam structure 513 is constructed and thus fails to provide an enabling disclosure with regard to the specific construction of dam structure 513. The obtuse reference to lifting arms 551 would not provide one of ordinary skill in the art with sufficient detail to determine how dam structure 513 would be constructed. Lacking such a starting point, dam structure 513 is an incompetent basis base upon which to argue that it would have been obvious to modify the unknowable dam structure 513 to arrive at anything, much less the inventions of claims 22 or 75.

Accordingly, claims 22 and 25 are allowable over the cited art.

The **dependent claims** are directed to specific novel subfeatures of the invention and are allowable for that reason as well as by depending from novel parent claims. For example, dependent **claims 78 and 80** are basically claims 76 and 23 amended to recite that the second expandable and contractible element is a vessel-occluding element placeable in an expanded, vessel-occluding state. Support for these amendments can be found in paragraph 87 and figures 7 and 8. In contrast, the balloons 90, 91 of figure 21 of Barbut do not occlude the blood vessel when in a radially expanded state. It would not have been obvious to modify balloons 90, 91 of Barbut to cause them to occlude the blood vessel because doing so would prevent the desired

movement of plaque removed by assembly 80 into filter assembly 69. Accordingly, claims 23 and 26 are allowable over the cited art.

### **CONCLUSION**

It is respectfully submitted that this application is now in condition for allowance, and such action is requested. If the Examiner believes a telephone conference would aid the prosecution of this case in any way, please call the undersigned at (650) 712-0340.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (GTEC 1001-4).

Respectfully submitted,

Dated: 08 April 2008

\_\_\_\_\_/James F. Hann/\_\_\_\_\_

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